

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE *25 JUN 13 PM 12:06*
EASTERN DIVISION

FILED BY S DC
CLERK OF U.S. DIST. CT
W.D. OF TN-JACKSON

LARRY STEVE MELTON, LARRY S. MELTON
R & J of TENNESSEE, INC.,

Plaintiffs,

v.

No. 02-1152-B

BANK OF LEXINGTON branch of the
BANK OF FRIENDSHIP, et al.,

Defendants.

**ORDER DENYING PLAINTIFF LARRY S. MELTON'S APPLICATIONS
FOR ENTRY OF DEFAULT**

Before the Court is the May 31, 2005, applications of the pro se Plaintiff, Larry S. Melton, for entry of default under Rule 55(a), Federal Rules of Civil Procedure, against the third-party Defendants, Bradley Kirk ("Kirk") and Carter, Stanfill & Kirk, PLLC ("CS&K"). According to his motion, Melton claims that Kirk and CS&K have failed to plead or otherwise defend against his counterclaim, although ninety days has passed since the Court entered orders on February 18, 2005 (Docket Entry No. 549) and February 25, 2005 (Docket Entry No. 550) to set aside the default against these Defendants. However, on May 27, 2005, Kirk and CS&K filed a motion to dismiss the counterclaims/cross-claims of Larry S. Melton and, thus, these Defendants have in fact pled as required by Rule 55(a). Under that Rule, a default shall be entered by the clerk only

[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules...

Fed.R.Civ.P. 55(a). Since the third-party Defendants submitted their motion, which constitutes

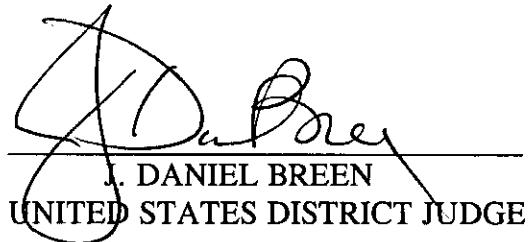
*This document entered on the docket sheet in compliance
with Rule 58 and/or 79 (a) FRCP on 6/13/05*

599

a pleading under the Federal Rules, before Melton's, the basis for granting a default is no longer present against these parties.

Accordingly, the application of the pro se Plaintiff, Larry S. Melton, for default against the third-party Defendants, Bradley Kirk and Carter-Stanfill & Kirk, PLLC, is DENIED.

IT IS SO ORDERED this 14 day of June, 2005.



J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 599 in case 1:02-CV-01152 was distributed by fax, mail, or direct printing on June 13, 2005 to the parties listed.

John D. Burleson
RAINEY KIZER REVIERE & BELL
105 S. Highland Avenue
Jackson, TN 38302-114

William F. Burns
WATSON BURNS, LLC
One Commerce Square
Ste. 2600
Memphis, TN 38103

Milton Dale Conder
RAINEY KIZER REVIERE & BELL
105 S. Highland Ave.
P.O. Box 1147
Jackson, TN 38302-114

Craig C. Conley
THOMASON HENDRIX HARVEY JOHNSON & MITCHELL
40 South Main Street
Ste. 2900
Memphis, TN 38103

Robert A. Cox
GLASSMAN EDWARDS WADE & WYATT, P.C.
26 N. Second Street
Memphis, TN 38103

John T. Downing
Federal Deposit Ins. Corp.
550 17th Street NW
Washington, DC 20429

Tim Edwards
GLASSMAN EDWARDS WADE & WYATT, P.C.
26 N. Second Street
Memphis, TN 38103

Richard Glassman
GLASSMAN EDWARDS WADE & WYATT, P.C.
26 N. Second Street
Memphis, TN 38103

Jeffrey L. Griffin
HARRIS SHELTON DUNLAP COBB & RYDER
2700 One Commerce Square
Memphis, TN 38103

Jeffrey L. Griffin
HARRIS SHELTON DUNLAP COBB & RYDER
One Commerce Square
Ste. 2700
Memphis, TN 38103

R. Douglas Hanson
GLASSMAN EDWARDS WADE & WYATT, P.C.
26 N. Second Street
Memphis, TN 38103

L. Lee Harrell
HARRELL & HARRELL
110 Northwest Court Sq.
Trenton, TN 38382

James L. Kirby
HARRIS SHELTON DUNLAP COBB & RYDER
One Commerce Square
Ste. 2700
Memphis, TN 38103

Bradley G. Kirk
CARTER STANFILL & KIRK
25 Natchez Trace Dr.
Lexington, TN 38351

Jerry E. Mitchell
THOMASON HENDRIX HARVEY JOHNSON & MITCHELL
40 S. Main St.
Ste. 2900
Memphis, TN 38103--552

John D. Stevens
RAINEY KIZER REVIERE & BELL
209 East Main Street
P. O. Box 1147
Jackson, TN 38302--114

William S Walton
MILLER & MARTIN
1200 One Nashville Place
150 Fourth Ave. North
Nashville, TN 37219--243

Daniel D. Warlick
LAW OFFICE OF DAN WARLICK
611 Commerce Street
Ste. 2712
Nashville, TN 37203

Beth Maloan
83 Bonaire Circle
Jackson, TN 38305

Larry S. Melton
116 Hidden Valley Cove
Lexington, TN 38351

Honorable J. Breen
US DISTRICT COURT